IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Manoj Kumar.
vs.
Noratmal and others.

S.B.CIVIL REVISION PETITION NO.442/2001 UNDER SECTION 115 CPC AGAINST THE ORDER DATED 24.3.2001 PASSED BY SHRI B.P. GOSWAMI, ADDITIONAL DISTRICT JUDGE, GULABPURA, DISTRICT BHILWARA IN CIVIL APPEAL NO.96/2000.

DATE OF JUDGMENT ::: 27.2.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.U Ghani, for the petitioner.
Mr. IR Choudhary, for the respondent no.1.
Mr. MA Siddiqui, for the respondent no.2.

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BY THE COURT:

Heard learned counsel for the parties.

The petitioner is aggrieved against the order

dated 1.6.2000 by which the executing court dismissed the petitioner's objection filed under Order 21 Rule 97 CPC and the order dated 24.3.2001 by which the appellate court dismissed the petitioner's appeal against the order dated 1.6.2000.

Brief facts of the case are that the contention of the petitioner was that the property in question was belonging to petitioner's father Madhulal. Madhulal died, however, the petitioner has not disclosed when his father died. Be it as it may be. The petitioner's mother Smt. Kamla (present respondent no.2) sold the suit property to one Dhanraj on 29.8.1981 for a consideration of Rs.6,000/-. Said Dhanraj sold the property to plaintiff/respondent no.1 Noratmal on 25.6.1982 by registered sale deed. The plaintiff filed civil original suit no.93/1990 against the petitioner's mother – Smt.Kamla (respondent no.2) alleging that she is tenant of the plaintiff. For this, the plaintiff produced the rent note executed by the respondent no.2. It appears from the facts mentioned in the impugned order itself that the respondent no.2 Smt. Kamla took a plea that she and her sons are owners of the property in dispute and in fact, the sale deeds are forged and fabricated one.

In the trial court, the petitioner's two brothers submitted an application under Order 1 Rule 10 CPC

which was rejected by the trial court. Those two brothers have not submitted any objection under Order 21 Rule 97 CPC for the reasons best known to them. The trial court ultimately decreed the suit of respondent no.1 vide judgment and decree dated 15.4.1999.

The respondent no.2 Smt. Kamla preferred regular first appeal before the first appellate court which was registered as appeal no.78/2000. This appeal was dismissed vide judgment and decree dated 31.10.2002. Against the aforementioned judgment and decree, the respondent no.2 Smt. Kamla preferred second appeal which was dismissed by this Court holding the appeal to be barred by time but when the matter was taken up before the Hon'ble Supreme court, the Hon'ble Supreme Court condoned the delay and the second appeal is, therefore, pending before this Court. However, it is admitted case of the parties that no stay order has been passed by this Court in second appeal staying the execution of the said decree.

The present petitioner submitted objection petition under Order 21 Rule 97 CPC before the execution court on 31.1.2000 and that objection petition was got dismissed as not pressed on 1.3.2000 by the petitioner himself without obtaining any leave for filing fresh objection petition. After dismissal of the objection petition by the executing court on 1.3.2000, the petitioner submitted another objection

petition under Order 21 Rule 97 CPC on 2.3.2000. Second objection petition was dismissed by the executing court vide order dated 1.6.2000. Appeal against the order dated 1.6.2000 was dismissed by the first appellate court vide order dated 24.3.2001.

Hence, this revision petition.

Learned counsel for the petitioner vehemently submitted that it is an admitted case that the petitioner's father was the owner of the property in dispute and after his death, the petitioner got share in the suit property and, therefore, the petitioner's mother had no right to sell the property in the year 1981 to Dhanraj, therefore, no title to the extent of share of the petitioner passed on to the subsequent purchaser – respondent no.1 and, therefore, the petitioner being the owner of the property as co-sharer has right to resist the eviction in pursuance of the decree passed against his mother in the civil court.

Learned counsel for the petitioner vehemently submitted that the dismissal of the petitioner's earlier objection petition under Order 21 Rule 97 CPC as withdrawn is of no consequence in view of the judgment of the Hon'ble Supreme Court in the case of Bhanwar Lal vs. Satyanarain and another reported in AIR 1995 SC 358 and, therefore, both the courts below committed error of law in dismissing the petitioner's

second objection petition on the ground of dismissal of the petitioner's earlier objection petition.

It is also submitted that all questions with respect to right, title and interest in the property can be decided only under Order 21 Rule 97 CPC and not by filing the suit as the suit is barred by law. For this purpose, learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of N.S.S. Narayana Sarma and others vs. M/s. Goldstone Exports (P) Ltd. and others reported in AIR 2002 SC 251.

So far as merits are concerned, learned counsel for the petitioner's argument is that the property was his father's property and after his death, the petitioner acquired share in the property and, therefore, the sale deed executed by the petitioner's mother has not affected the petitioner's share in the suit property. It appears from the affidavit of the petitioner that he was of the age of 21 years in the year 2001. Assuming that the age given by the petitioner is correct, then it will be worthwhile to mention here that neither the petitioner's mother nor the petitioner's two brothers, who were admittedly major at the relevant time, challenged the sale deeds executed in the years 1981 and 1982. The petitioner's mother contested the suit on the basis of the plea which has been taken by the petitioner in the objection

petition and the civil court has already decided the issue whether the petitioner's mother is tenant or not. That finding recorded by the trial court has been upheld by the first appellate court and the second appeal has not yet been admitted by this Court and no interim order has been passed staying the execution proceedings, as admitted by both the the parties.

Apart from the above facts, it will be worthwhile to mention here that allegation against the plaintiff/respondent no.1 for obtaining the sale deeds by unlawful means or by deceitful means is one matter but so far as to challenge the sale deed executed by the petitioner's mother in favour of Dhanraj in the year 1981 is concerned, it appears that there are no grounds mentioned in the application filed by the petitioner except that the original owner of the suit property was petitioner's father. The petitioner cannot have any knowledge about the event which took place in the year 1981 when he was of the age of 1 or 2 years only and when the second sale deed was executed, his age was 2 or 3 years only. The petitioner's two brothers have also not claimed share in the property by submitting application as submitted by the petitioner claiming share in the property which was sold in the years 1981 and 1982 by the petitioner's own mother.

In view of the above reasons, I do not find any

merit in the objection petition filed by the petitioner under Order 21 Rule 97 CPC and, therefore, this Court is not inclined to interfere in the revisional jurisdiction where the two courts below have dismissed the objection petition, may on other grounds.

Consequently, this revision petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya